

UNITED STATES BANKRUPTCY COURT
For The Western District of Michigan

in the matter of:

DARREN PAUL GORHAM
281 Kenlock, S.E.
Grand Rapids MI 49548

Debtor.

Case Number: GG 04-11250
Chapter Seven (7) Filed: 09-13-04
Honorable James D. Gregg
James W. Hoerner, Trustee

Notice to Creditors and Other Parties in Interest

YOU ARE HEREBY NOTIFIED THAT A **HEARING will** be held at the United States Bankruptcy Court, One Division Avenue, N.W., Third Floor, Courtroom B, **Grand Rapids, Michigan on Wed., July 26, 2006 at 1:30 p.m.** to consider & act upon the following matter:

**Trustee's Motion to Set Aside Prior Sale Sale of Debtor's SDD and SDM
Liquor Licenses, to Re-sell Liquor Licenses, and Limit Debtor's
Claim of Exemptions**

a copy of motion is enclosed

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read the documents carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a response to the motion explaining your position. Any response shall be filed with the clerk of the U.S. Bankruptcy Court, One Division Avenue, N.W., Room 200, Grand Rapids MI 49503, and should be received by the clerk at least 3 (three) days before the hearing date. A copy of your response should also be mailed upon the party filing the motion and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion or petition, and may enter an order granting the relief requested.



Daniel M. LaVille, Clerk of Court

David G. Scalici, Deputy Clerk
Dated: 6-29-06

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the clerk's office from the court files or docket.

A copy of this notice & motion forwarded to noticing center for service.

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

In the Matter of:

Darren Paul Gorham d/b/a Trufant Foods,

Debtor.

Case No. GG 04-11250
(Chapter 7)
Filed: September 13, 2004

**TRUSTEE'S MOTION TO SET ASIDE PRIOR SALE OF DEBTOR'S SDD AND SDM LIQUOR
LICENSES, TO RE-SELL SAID LIQUOR LICENSES,
AND LIMIT DEBTOR'S CLAIM OF EXEMPTIONS THEREON**

NOW COMES James W. Hoerner, Chapter 7 Trustee herein, by and through his attorneys, Day & Sawdey, P.C., pursuant to the provisions of Bankruptcy Code § 363 and Fed.R.Bankr.P. 6004, and shows unto this Court as follows:

1. Your Movant is the duly-appointed, qualified and acting Chapter 7 Trustee in the above-entitled case, which was commenced by the Debtor through the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on September 13, 2004, whereupon your Movant was appointed Trustee herein.
2. Included among the assets in this estate is a Specially Designated Distributor (SDD) liquor license (no. 115289) for use in Maple Valley Township, Montcalm County, Michigan, as well as a Specially Designated Merchant (SDM) liquor license (no. 115290), both of which licenses (collectively the "liquor licenses") have been placed in escrow by the Trustee with the Michigan Liquor Control Commission (MLCC) under request ID: 271694. The Debtor was utilizing said liquor licenses at 116A. Street, Trufant, Michigan, in his former business known as Trufant Foods. The SDD license can only be utilized in Maple Valley Township, Montcalm County, Michigan, while the SDM license is, upon information and belief, portable throughout the state.
3. Pursuant to the Order Confirming Sale of Debtor's SDD and SDM Liquor Licenses for Use in Maple Valley Township, Montcalm County, Michigan, entered herein on November 17, 2005, the Trustee was authorized to sell liquor licenses to Columbia Investors, LLC for \$12,200. However, Columbia Investors

LLC has now decided not to pursue its purchase of said liquor licenses from this estate and forfeited its \$1,000 earnest money deposit. Consequently, said licenses have to be re-sold.

4. The Trustee has now received an offer for purchase of the aforesaid liquor licenses from JJ Mini Mart, Inc. of 1101 Kohler Road, Trufant, Michigan 49347, in the amount of \$6,000. The sale of the liquor licenses will be made pursuant to such offer and the terms hereof. To the extent that there is a conflict in such provisions, the terms of this Motion shall prevail.

5. To the best of the Trustee's knowledge, information and belief, said liquor licenses are held free and clear of any liens or claims thereon. Further, while the Debtor has previously had his amended claim of exemptions allowed against said liquor licenses in the amount of \$6,100 pursuant to this Court's Order Approving Settlement of Trustee's Objection to Debtor's Amended Claim of Exemptions as to Liquor License of March 16, 2006, he has agreed to voluntarily reduce such claim of exemptions down to \$3,000 so that there will be some benefit to the estate in re-selling such liquor licenses. Such voluntary reduction in his amended claim of exemptions is not to be construed as a waiver thereof under 11 USC § 522(e), or otherwise, as to the extent the Debtor has remaining exemptions available, the same can be used against other property, subject to the Trustee's right to object thereto.

6. From the Trustee's investigation, it appears that SDD liquor licenses, for use in Maple Valley Township, vary in price, depending upon supply and demand. SDM licenses are typically not transferred as they can, fairly readily, be obtained from the MLCC. This is the best and highest substitute offer the Trustee has received, to date, in connection with these liquor licenses.

7. The liquor licenses shall be offered for sale in one (1) lot with bidding commencing at the amount of the bid of JJ Mini Mart, Inc., i.e. \$6,000. Thereafter, bidding will be in increments of no less than \$200, with the initial bid to be at least \$6,500. Contingent bids will not be received.

8. The sale is to be made on a cash basis with the successful bidder being required to tender to the Trustee an earnest money deposit of \$1,000 immediately after the sale has been approved by the Bankruptcy

Court. The earnest money deposit shall be held pursuant to the terms hereof with the balance of the purchase price due at a closing to be held after said sale and transfer has further been approved by the MLCC, Maple Valley Township, and after approval and clearance has been received from local law enforcement agencies.

9. The Trustee has the right to refuse to recommend confirmation of any bid which will not, in his judgment, assure a reasonable monetary return to the estate. Prospective purchasers may make further inquiry concerning said liquor licenses by contacting Trustee's counsel, whose name and address appear at the foot of this Motion.

10. The sale of said liquor licenses shall be made on an "AS-IS, WHERE-IS" basis, without representation or warranty, express or implied, of any kind, nature or description including, without limitation, any warranty by description or of merchantability, usability, or of fitness for any particular purpose. No associated property, real or personal, shall be conveyed as part of the sale of the liquor licenses.

11. The Trustee knows of no claims, liens or security interests against said liquor licenses. Consequently, any interest claimed therein would be in bona fide dispute pursuant to 11 USC § 363(f)(4). As such, the liquor licenses shall be sold FREE and CLEAR of any liens or claims thereon, with the interest of any party asserting a lien or claim thereon attaching to the sale proceeds in the same order of rank, validity and priority as they presently may exist against such property. All expenses of custody, protection and insurance of the liquor licenses, as well as the expenses of sale, including administrative and all legal expenses of the bankruptcy proceeding relating to the protection and sale of said liquor licenses shall be charged against the sale proceeds with priority over all claims.

12. The sale of said liquor licenses is subject to approval not only by the U.S. Bankruptcy Court but, also, the MLCC and Maple Valley Township, after due investigation has been made by appropriate law enforcement agencies. If the sale is not approved by one or more of such governmental entities, even though approved by the U.S. Bankruptcy Court, the Trustee may move to have said sale set aside by this Court and to, thereafter, move to re-sell said liquor licenses once the Trustee receives another acceptable offer thereon.

In such event, the earnest money deposit shall be returned to the proposed buyer. If, however, a sale is approved by this Court and approval is furthermore made by all necessary governmental agencies and the buyer, thereafter, elects not to close, then the earnest money deposit shall be forfeited to the Trustee as his liquidated damages and he shall have no further claim against the buyer for failure to close said purchase.

13. If a party other than JJ Mini Mart, Inc. is the highest bidder, they shall execute a purchase agreement to reflect such offer. If JJ Mini Mart, Inc. is the highest bidder, but for a higher purchase price, its duly authorized representative shall execute an addendum to its purchase agreement reflecting the same.

14. Your Movant believes that the re-sale of said SDD and SDM liquor licenses to JJ Mini Mart, Inc. for the sum of \$6,000, as aforesaid, or to such other party who may submit a higher offer thereon, pursuant to the terms set forth above, is in the best interest of the creditors in this estate, and that such proposed sale should be noticed to all creditors herein and other interested parties, as well as those parties on the Buyers List.

WHEREFORE, YOUR MOVANT PRAYS that the creditors herein be ordered to object or otherwise show cause, on a time and date certain, why the prior sale of these liquor licenses should not be set aside; why said liquor licenses should not be re-sold, as aforesaid, to JJ Mini Mart, Inc. or to such other party who might make a higher bid thereon; why the Debtor's amended claim of exemptions against the sale proceeds should not be limited to \$3,000; why the Trustee should not be allowed to execute a purchase agreement, an appropriate bill of sale, and other transfer documents in order to facilitate the sale and transfer of said liquor licenses to the highest bidder; and why he should not have such other and further relief as this Court might deem just, equitable and proper.

Dated: June 27, 2006

DAY & SAWDEY, P.C.
Attorneys for Trustee

By _____/s/_____
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LAVM/mld

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